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EXAMINER

CHEVALIER, ALICIA ANN

ART UNIT PAPER NUMBER

1772

DATE MAILED: 12/04/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/811,590

Applicant(s)

NEVISON, DALE C.H.

Examiner

Alicia Chevalier

Art Unit

1772

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 September 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17, 19 and 20 is/are pending in the application.
- 4a) Of the above claim(s) 8-11 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 5-7, 15 and 16 is/are allowed.
- 6) ☒ Claim(s) 1-4, 12-14, 17, 19 and 20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

RESPONSE TO AMENDMENT

1. Claims 1-17, 19 and 20 are pending in the application, claims 8-11 are withdrawn from consideration. Claim 18 has been cancelled.
2. Amendments to the claims, filed on September 14, 2006, have been entered in the above-identified application.

WITHDRAWN REJECTIONS

3. The 35 U.S.C. §102 rejection of claims 1, 2 and 12 over Vaux (US Patent No. 4,991,834), made of record in the office action mailed August 9, 2006, pages 2-3, paragraph #4 has been withdrawn due to Applicant's amendment in the response filed September 19, 2006.
4. The 35 U.S.C. §102 rejection of claim 1 over Taylor (US Patent No. 2,810,672), made of record in the office action mailed August 9, 2006, page 3, paragraph #5 has been withdrawn due to Applicant's amendment in the response filed September 19, 2006.
5. The 35 U.S.C. §102 rejection of claims 3 and 18 over Rope et al. (US Patent No. 5,527,128), made of record in the office action mailed August 9, 2006, pages 3-4, paragraph #6 has been withdrawn due to Applicant's amendment in the response filed September 19, 2006.
6. The 35 U.S.C. §102 rejection of claim 4 over Van Der Pyl (US Patent No. 1,619,773), made of record in the office action mailed August 9, 2006, page 4, paragraph #7 has been withdrawn due to Applicant's amendment in the response filed September 19, 2006.

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7. The 35 U.S.C. §103 rejection of claims 13 and 14 as over Van Der Pyl (US Patent No. 1,619,773), made of record in the office action mailed August 9, 2006, page 4, paragraph #8 has been withdrawn due to Applicant's amendment in the response filed September 19, 2006.

REJECTIONS

8. **The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.**

Claim Rejections - 35 USC § 112

9. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

10. Claims 1-4, 12-14, 17, 19 and 20 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. In the instant case amended claims 1, 3 and 4 contain(s) the limitation "flexible rubber mat." The specification does not disclose that the mat that can be made from rubber is flexible. The specification appears to contradict this limitation on page 3, lines 18-19 "The selectively placed grit would also have support from underneath to inhibit flexure causing the grit to become unbonded." The specification seems to indicate a flexible rubber mat is not desired. Therefore, the limitation is deemed to be new matter.

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11. Claims 1, 2 and 12 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "softer" in claim 1 is a relative term which renders the claim indefinite. The term "softer" is not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It is unclear how soft the material acts or how hard the original material is.

Allowable Subject Matter

12. Claims 5-7, 15 and 16 are allowed.

ANSWERS TO APPLICANT'S ARGUMENTS

13. Applicant's arguments in the response filed September 14, 2006 regarding the 35 U.S.C. 102 and 103 rejections previously of record have been considered but are moot since the rejections have been withdrawn.

14. Applicant's arguments in the response filed September 14, 2006 regarding the new limitation "flexible rubber mat" of record have been carefully considered but are deemed unpersuasive.

Applicant argues that support for the limitation can be found in the specification paragraphs 31-33.

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The specification at paragraphs 31-33 recites:

[0031] The preferred embodiment of the improved mat 30 and methods for fabricating it are shown in Figures 1 through 10. Preferably, the mat 30 is molded from a **hard rubber**. This will promote durability. The mat 30 is comprised of a mat base 32, long legs 38, short legs 40, ribs 44, channels 52, grit trenches 64, adhesive 72 and grit 70. The mat base 32 has a top surface 34 and a bottom surface 36.

[0032] The long legs 38 are perpendicularly attached to the bottom surface 36 of the mat base 32. This will provide resilient support for the mat base 32. The short legs 40 are perpendicularly attached to the bottom surface of the mat base 32. The long legs 38 and the short legs 40 are adapted to provide a selected mat compression when a load is applied to the top surface 34 of the mat base 32.

The combination of long legs 38 and short legs 40 causes the mat 30 which is constructed from hard rubber to feel and function as if it were constructed from a softer, more compressive rubber.

[0033] This function is shown in Figures 5a, 5b and 5c. There, a compressive force 42 is applied to the top surface 34 of the mat base 32. Before the compressive force 42 is applied the long leg 38 is in contact with the ground. The short legs 40 are raised above the ground. The compressive force 42 causes the long leg 38 to compress thereby bringing the short legs 40 closer to the ground. Finally, in Figure 5c, the short legs 40 contact the ground and begin to compress. ***The result is a mat 30 constructed from hard rubber which compresses as if it were constructed from a softer material.*** We have found that when using a configuration similar to that depicted in Figure 2 to fabricate an 18 inch by 18 inch by three-quarter inch mat, the combination of 504 long legs and 144 short legs 40 provides the preferred compression of the mat.

As the examiner points out in the 112-first paragraph rejection above, the examiner is unable to find support for the limitation “flexible”. The specification appears to contradict this limitation on page 3, lines 18-19 “The selectively placed grit would also have support from underneath to inhibit flexure causing the grit to become unbonded.” It is further contradicted in this particular section of the specification as well, since the specification desires a hard rubber.

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This section of the specification discuss a hard rubber that acts like a soft rubber and discusses a compressive rubber, but never indicates the flexible nature of the mat. Furthermore, this section of the specification does not provide a standard for ascertaining the requisite degree of soften, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. Also, it is further questioned whether the whole mat is flexible or the particular leg shape and formation act as if they were flexible.

Conclusion

15. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alicia Chevalier whose telephone number is (571) 272-1490. The examiner can normally be reached on Monday through Friday from 8:00 am to 4:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on (571) 272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

ac

11/24/06


ALICIA CHEVALIER
PRIMARY EXAMINER